Aerospace Law OLC 2001

Major Rob Ramey
AFJAGS

Overview

- The Aerospace Continuum and International Law
- International Air Law
  - Airspace Classification
  - Overflight Rights
  - Special Issues
- International Space Law
  - Space Treaties & Issues
  - Related Treaties Affecting Military Space

Aerospace Continuum

"Of, or pertaining to, Earth's envelope of atmosphere and the space above it; two separate entities considered as a single realm for activity in launching, guidance, and control of vehicles that will travel in both entities."

Joint Publication 1-02

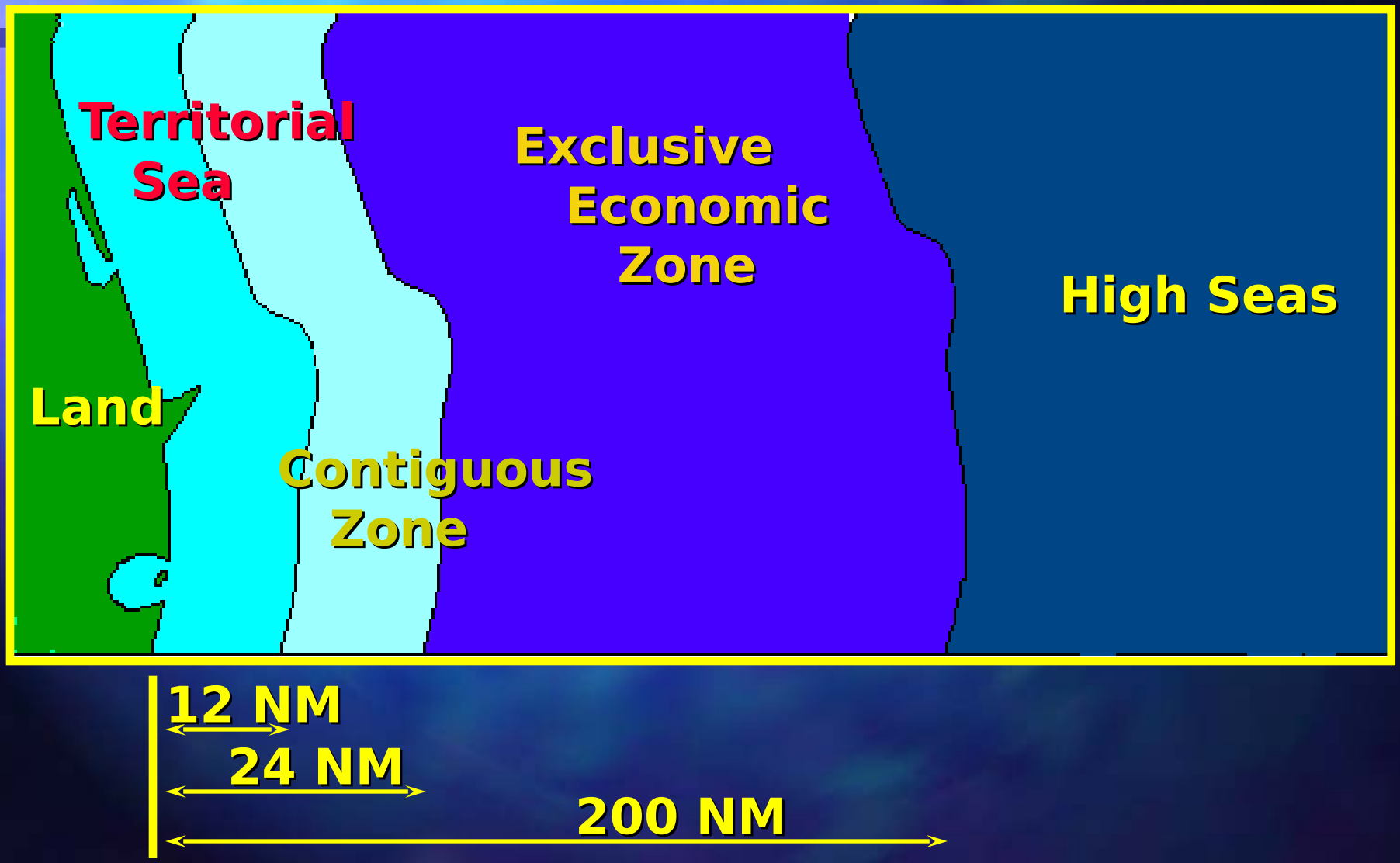
MAJOR I-LAW CATEGORIES

- *Outer Space Law*
- *Law of the Sea*
- *Air Law*
- Law Relating to Individuals
- Law of Int'l Economic Development
- State Responsibility
- Law of Treaties
- Environmental Law
- Law Regulating Int'l Organizations
- Law Relating to Int'l Peace and Security
- Law of Armed Conflict
- Int'l Criminal Law

International Air Law for Military Operations

- Chicago Convention: Creates Category "National" Airspace; Does not Govern State Aircraft ("State" Undefined)
- Law of the Sea Convention: Creates Category "International" Airspace
- International Civil Aviation Organization (ICAO): Establishes Bin
  Regulations for Civil Aviation

Maritime Zones (Review)



Airspace Classification

- National Airspace: “Territorial airspace” over land, internal waters, archipelagic waters, and territorial seas of nations
- 49 U.S.C. §40103(a)(1): “The [US] Government has exclusive sovereignty of airspace of the United States.”
- Implication: Overflight Only Authorized by Prior Permission

Airspace Classification

- International Airspace: Includes airspace over high seas, contiguous zones, EEZ's, and Antarctica (for "peaceful purposes")
- AFP 110-31, 2-1e: "...includes all airspace above the high seas, unclaimed areas, and other areas [having been] internationalized."
- Implication: No Prior Permission Necessary; Exercise of "Due Regard"

Air Passage Rights: LOS Convention

- Territorial Sea
  - None without consent
  - No innocent passage for aircraft
- Contiguous Zone and EEZ
  - Full Freedom of Navigation
  - Due Regard for EEZ Resource Rights
- High Seas
  - Full freedom of navigation
  - Exercise Due Regard for Others Exercising Their Rights

Flight Information Regions (FIRs)

- Established for Safety of Civil Aviation
- Encompass Nat'l and Int'l Airspace
- No Obligation for Military A/C to Follow
- US Policy: Military A/C on Routine Flights Through Int'l Airspace Utilize FIR Services and Follow ICAO Procedures
- "Due regard" Requirement When Not Following ICAO Flight Procedures

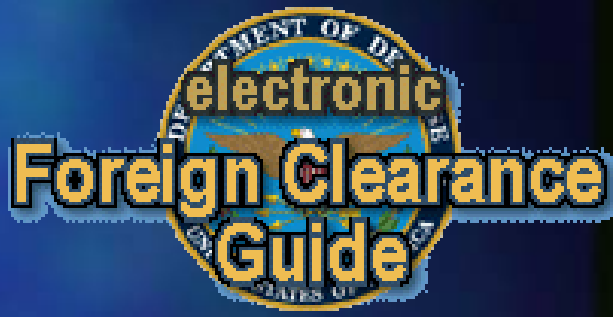
Air Defense Identification Zones (ADIZs)

- Can be Established as Condition of Entry Into National Airspace
- Not a Claim of Sovereignty
- No Peacetime Right to Insist on Identification, Position Reports, Flight Plans, etc., for Aircraft not Intending to Enter National Airspace

US Overflight Policy JCS Message: January 1993

- Routinely Exercise US Military Overflight Rights in International Airspace (A/S)
- When Challenged in Int'l A/S: Advise of US Military Status, Operating IAW Int'l Law in International A/S
- When Intercepted in Foreign A/S: Comply with Direction to Depart/Land
- When Intercepted in Int'l A/S: Continue on Planned Route & Advise of Status

DoD Foreign Clearance Guide



- Establishes directive policy DoD overflight, landing, entry within foreign territory
  - http://www.fcg.pentagon.mil/fcg/fcg.htm
- Supplemented by Service Directives
  - Air Force: AFI 24-405
  - Army: AR 55-46 and AR 600-8-10
  - Navy: OPNAVINST 3710.2 (Aircraft) and OPNAVINST 4650.11 (Personnel)

Notice To Airmen (NOTAMs)

- Communicate Specific Flight Restrictions
- Example: Changes to No Fly Zones
- Periodically Drafted by Judge Advocates
- US NOTAM Office Web Site
  - Real Time NOTAM Data
  - Contains All NOTAMs Validated by US NOTAM System
  - www.notams.jcs.mil

United States NOTAM O

~ For DoD Flight Only

Fees Charged to State Aircraft
DoS Cable: May 1996

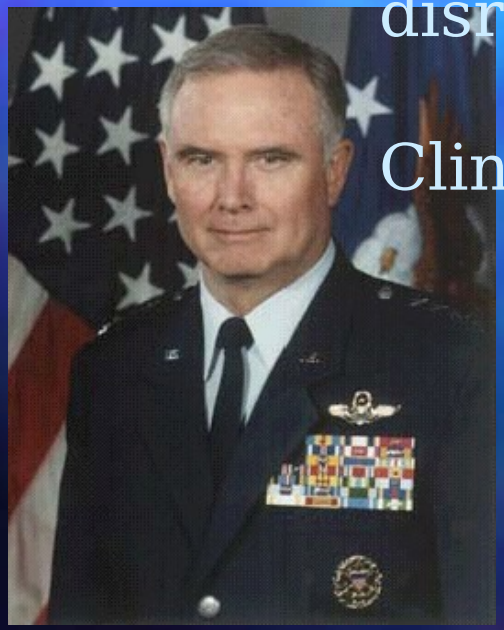
- US Will Not Pay Foreign Navigation, Landing, Parking or Overflight Fees
  - Akin to Levying Tax on Sovereigns
  - Applies only to State Aircraft
  - Will Pay “Reasonable Charges for Services Requested and Received”
- DoD Contract Aircraft not “State” Aircraft Unless so Designated

Space Law for Military Operations

- Background Information
- Major Space Treaties
- Other International Agreements
- Domestic Law

“Our armed forces rely on space assets for various military missions . . . and these assets must be protected. At the same time, we must have the ability to prevent future adversaries from using their space-based assets against our forces in wartime and can do this through a variety of methods, including destroying ground terminals or disrupting satellite links.”

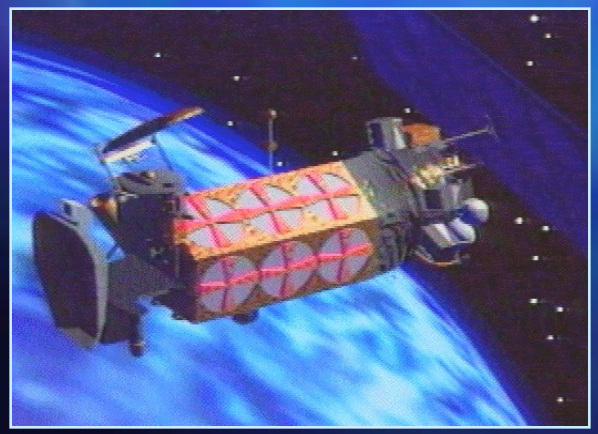
President William J. Clinton



“We cannot afford to do things in space for space’s sake or just because we can. Our military space activities must be connected and integrated with the effects we want to achieve throughout the aerospace

Military Space Mission Areas

- Force Enhancement
- Space Support
- Space Control
- Space Force Application



United Nations Charter: Use of Force Provisions

- Article 2(4):

  All members shall refrain ... from the threat or use of force against ... any state ...

- Article 51:

  Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations ...

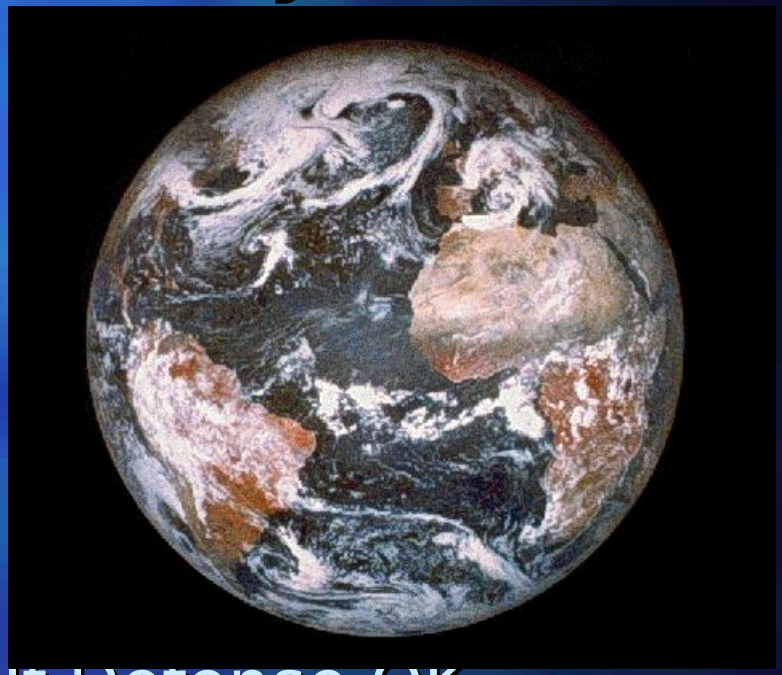
Airspace vs. Outer Space

- Airspace: National Contro
  (Sovereignty Principle)
- Outer Space: Free Use by
  All States (No Sovereignt
  Principle)
- Boundary Between Air and Space?
  - Proposals But No Consensus
  - US: No Need Has Been Shown

Major Space Treaties

- Outer Space Treaty (1967
- Rescue and Return Agreement - Astronauts and Space Objects (1968
- Liability Convention (1972)
- Registration Convention (1974)

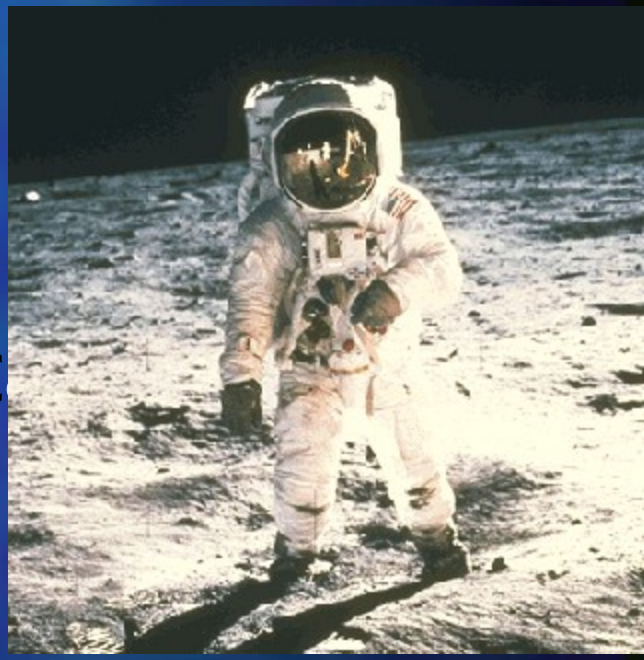
Outer Space Treaty



- Widely Accepted
- Art I: OS Free for All
- Art II: No National Appropriation
- Art III: I-Law Applies
  - Art 51 (UN Charter): Self Defense OK
  - LOAC Applies
- Art IV: Weaponry and Military Uses

Rescue and Return Agreement

- Primary Purpose: Safety Astronauts
- Astronauts to be Returned and Promptly" in C Emergency, etc.
  - "Envoys of Mankind"
  - Response Must be Proactive
- Space Objects to be Returned if Found
  - Response Need Not be Proactive

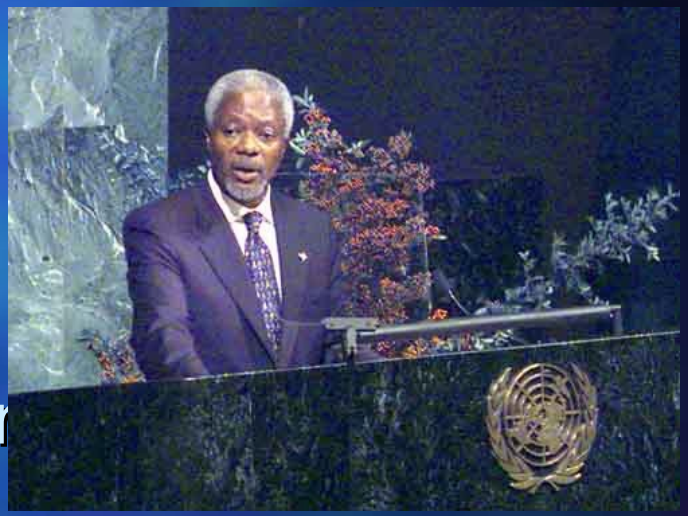


Liability Convention

- Expands OST Article VII
- Absolute Liability for Caused on Aircraft in Fligh
- Fault-Based Liability for D Caused Elsewhere
- Exonerations and Exclusions
- One Year Statute of Limitations

Registration Convention

- National Registry
- UN Registry
- Must Register Space Pr
  "As Soon as
  Launch
- Notice Includes
  - Date/Location of Launch
  - Basic Orbital Parameters
  - General Function



Other Agreements Affecting Military Space Operations

- Limited Test Ban Treaty (1963)
- Anti-Ballistic Missile Treaty (1972)
- Environmental Modification Treaty (1977)

Space Issues

- Increasing DoD Use of Commercial Space Assets
- Impact of Multi-National Ownership of Assets
- Space Debris
- Limitations Effected by the ITU
- ROEs/SOFAs

Space Law Summary

- Very Few Restrictions on Military Activity in Space
- Existing Restrictions are Significant, Also Subject to Interpretation
- Highlights Important Role of National Policy